SINGLE BENCH

CF 1002 (A) (C)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P (S). NO...249.../2007

PETITIONER

Srikant Dewangan aged about 46 years S/o late Khaiyaram Dewangan at present working as a fisheries Inspector Office of the Dy. Director, fisheries, Durg, R/o of Adersh Nagar Durg (CG).

P.R. No. 1444/07
Presented on 4/11/07
at 4 o'clock

VERSUS

RESPONDENTS

1. State of Chhattisgarh Through the Secretary Fisheries Department, D. K. S. Bhawan Raipur. (CG)

2. Director, Fisheries Department, Raipur Distrit Raipur (CG)

3. Deputy Director, Fisheries Department, Durg District Durg (CG)

4. Assistant Director, Fisheries Department Narayanpur District Bastar(CG).

5. Shri Ajeet kumar Gupta, Inspector, Fisheries Department, Office of Assistant Director Fiesheries Narayanpur District Bastar. (CG)

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(25)

PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRITS OF MANDAMUS AND CERTIORARY AND FOR OTHER SUITABLE WRITS AND DIRECTIONS :-

(90) (91)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 249 of 2007

Petitioner: Srikant Dewangan

Versus

Respondents: State of Chhattisgarh & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Vishnu Kostha, Advocate for the petitioner.
Miss Sunita Jain, Panel lawyer for the respondents No. 1 to 4.
None for the respondent No.5.

ORDER

(Passed on this 18th day of January, 2007)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioner, in the instant petition, assails the impugned order dated 14.11.2006 (Annexure P/3) whereby the petitioner has been transferred from Durg to Narayanpur, District- Baster.
2. The petitioner has impugned the order dated 14.11.2006 on the ground that the order is tainted with malice as the same was passed to accommodate and adjust the respondent No.5. The impugned order is contrary to the transfer guidelines dated 26.5.2006 (Annexure P/4). The transfer order is arbitrary, unjustified, unreasonable and without public interest or administrative exigency.
3. Shri Vishnu Kostha, learned counsel appearing for the petitioner submits that the impugned order is bad in law, arbitrary, unreasonable and it has been passed during mid session. The daughter of the petitioner Miss Nansi Dewangan is studying in class-12th, she has to face board examination in this year and the

son of the petitioner master Palas Dewangan is studying in class 8th at Durg. As such, the impugned transfer order be quashed.

4. Miss Sunita Jain, learned Panel Lawyer, appearing for the respondents No. 1 to 4 on the contrary submitted that the order passed was due to the administrative exigency in public interest and the transfer order contains not only the names of petitioner and respondent No.5 but by the said transfer order, placement of six more persons were effected. Learned counsel further submitted that the transfer guidelines dated 26.5.2006 clearly provides for transfer of employee in coordination of the Chief Minister through the Chief Secretary. In the present case the impugned order was passed in coordination with the Chief Minister as is evident from the impugned order itself which was endorsed to the Secretary to the Chief Minister.

5. It was further contended that the averment of the petitioner to the effect that the transfer order was passed in exercise of the powers tainted with malafide, malice, unreasonableness, contrary to the transfer guidelines is without any basis as there is no material to substantiate the averments except the bald statements made in the petition.

6. Having heard learned counsel for the parties and having perused the documents annexed thereto, it is evident that the petitioner has failed to establish any malafide or malice against the respondents. The transfer order was passed due to administrative exigency in the public interest. There is no violation of the transfer guidelines dated 26.5.2006 which clearly provides for transfer of an employee in coordination with the Chief Minister. The present impugned order is bearing endorsement to the

Secretary to the Chief Minister as required under the transfer guidelines. Thus, there is no breach of the transfer guidelines.

7. I have examined the facts of the case. The allegations, stated above, have not been established in the facts of the case. The Supreme Court in the Case of **Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and others**[1] has observed as under:-

> "4. Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer (see Abani Kanta Ray v. State of Orissa[1]. unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the court cannot interfere with it (see Union of India v. S.L. Abbas[2]). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it. In Union of India v. Janardhan Debanath[3] it was observed as follows : (SCC p. 250, para 9)
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> "No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a mater of routine, as though they were the appellate authorities substituting their own decision for that of the

employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan[4]."

9. It is well settled principle of law that transfer is an incident of service and it is for the employer to decide as to where a particular officer/employee be posted keeping in view public interest as well as administrative exigency. This Court has limited jurisdiction to interfere in the transfer matter and this Court can interfere only in the case of proved malafide, non-competence of authority passing the transfer order and transfer order not being in conformity with the rules and regulations. The petitioner/employee cannot be permitted to remain at one place, forever, by Court orders.

10. The petitioner has not made out any case for interference by this Court in the present transfer.

11. For the reasons and as a result this petition is dismissed. No order as to costs. However, in the facts of the case when the wards of the petitioner are studying at Durg, it is directed that the petitioner be not disturbed for a period of three months from the present place of posting i.e. Durg.

Sd/-
Satish K. Agnihotri
Judge

(2004 (12) SCC 299)[1]

Thakur